

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists due to the detection of Melon fruit fly, *Bactrocera cucurbitae*, in California. On August 28, 2010, a total of two adult male Melon fruit flies were trapped in the Arvin area of Kern County. The detection of these Melon fruit flies is indicative of an incipient infestation of Melon fruit fly in the Arvin area of Kern County. Melon fruit fly a destructive insect pest which attacks the fruit of many plants, including apple, avocado, beans, cantaloupe, chayote, citrus, cucurbits (cucumber, melons pumpkin, squash and gourds), eggplant, fig, guava, mango, peach, pear, peppers, tomato, and watermelon. This unexpected occurrence of melon fruit flies in the Arvin area meets the national and international trigger for expanding the regulated area in the Arvin area of Kern County.

Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms that cause tissue breakdown. Damaged fruit is generally unfit for human consumption. Movement of hosts infested with the larvae of the fly can artificially spread the fly. If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

As a result, it is necessary to propose an emergency amendment of Section 3425. The intended effect of the emergency amendment of Section 3425, Melon Fruit Fly Interior Quarantine is to provide the necessary regulatory authority to prevent the human-assisted artificial spread of this exotic pest. Artificial spread, such as melon fruit flies being moved in infested host commodities from infested areas to uninfested areas has the potential to spread the pest rapidly throughout the State, whereas the natural spread of the pest would be gradual.

This affected Arvin area of Kern County is rural and primarily agricultural production land. Host commodities are ready to be harvested now. In order to prevent the intrastate and interstate movement of host material which may be infested with the fly long distances, the Department needs to immediately begin quarantine activities. This should help ensure the movement of host commodities from the quarantine area does not lead to new infestations in uninfested areas and cause additional significant damage to the growers in the immediate and adjacent areas if the fly is not contained. Therefore, the Secretary believes that the five calendar days public comment period should be waived.

To prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary immediately to regulate the human assisted movement of hosts that can carry the fly from, into and within the infested area and a surrounding buffer area. Therefore, it is necessary to amend this regulation as an emergency action.

The Secretary is proposing to amend this regulation pursuant to the authority in Food and Agricultural Code (FAC) Section 407, "the director may adopt such regulations as are reasonably necessary to carry out the provisions of this code which he is directed or authorized to administer or enforce," and FAC Section 5322, "the director may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in his or her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC Section 5321.

Additionally, FAC Section 401.5 states, "the department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state" and Section 403 states, "the department shall prevent the spread of injurious insect pests."

Emergency Rulemaking Procedures

“Emergency means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare,” Government Code Section 11342.545. “If a state agency makes a finding that the adoption of a regulation is necessary to address an emergency, the regulation may be adopted as an emergency regulation.” Government Code Section 11346.1(b)(1).

In this document the Department is providing the necessary specific facts demonstrating the existence of an emergency and the need for immediate action to prevent serious harm to the general welfare of the citizens of California, pursuant to Government Code Section 11346.1(b)(2).

Since the Department does not have a record of any person requesting a notice of regulatory actions under Government Code Section 11346.4(a)(1), the provisions of Government Code Section 11346.1(a)(2) do not appear to be applicable to this emergency action.

Further, the Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action to give the notice pursuant to Government Code Section 11346.1 or allow five calendar days to allow public comment pursuant to Government Code Section 11349.6 would be inconsistent with the public interest, within the meaning of Government Code Section 11349.6(b).

The information contained within this finding of emergency also meets the requirements of Government Code Sections 11346.1 and 11346.5.

Emergency Defined

“Specific actions necessary to prevent or mitigate an emergency” are exempt from the California Environmental Quality Act (CEQA). Public Resources Code Section 21080(b)(4). “Emergency means a sudden, unexpected occurrence, involving a clear

and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.” Public Resources Code Section 21060.3.

Evidence of Emergency

Under Section 14.5 of the State of California Emergency Plan, dated July 1, 2009, the Department is responsible for coordinating integrated federal, state and local preparedness for response to, recovery from and mitigation of plant diseases and pests and overseeing the control and eradication of outbreaks of harmful or economically significant plant pests and diseases. The Department is also charged with leading the administration of programs to detect, control and eradicate pests affecting plants.

The melon fruit fly has the capability of causing significant irreparable harm to California’s agricultural industry and some possible adverse environmental impacts. Should the Department not take these actions; the melon fruit fly could cause direct catastrophic losses to California’s affected agricultural industries and significant harm to the State’s economy through cost impacts or prohibitions to interstate commerce and exports of host commodities.

If the fly were allowed to spread and become established in host fruit production areas, California’s agricultural industry would suffer losses due to increased pesticide use, decreased production of marketable fruit, and loss of markets if the United States Department of Agriculture or other states or countries enact quarantines against California products which can host and carry the fly.

Under international trade agreements, the USDA is obligated to notify any trading partner which has concerns regarding the quarantine status of melon fruit fly in the United States. The USDA and the State will also be implementing quarantine regulations to prevent the artificial movement of the melon fruit fly while it is under eradication. Examples of countries which have specific concerns pertaining to melon

fruit fly include Argentina, Australia, Brazil, Chile, Costa Rica, Mexico, New Zealand, South Africa and South Korea. Some of these countries are major trading partners involving California produced host commodities. Trade impacts may not be just limited to host commodities produced within the regulated area or even in California. For instance Mexico and South Korea will not accept any melon fruit fly host material produced in, packed or repacked within a regulated area even if it originated in another state. Additionally, any host commodities transiting a regulated cannot unnecessarily stop and must be sealed and enclosed in a manner to exclude the possible entry of the fly into the host shipment. The introduction of exotic fruit flies such as melon fruit fly is always the subject of the regional and specific bilateral trade discussions which occur between the USDA and our trading partners. The expeditious implementation of exotic fruit fly quarantines is a key to ensure qualifying host commodities produced in or packed anywhere in California can also continue to move in international trade. Our trading partners are astute and have used the internet in the past to review our State regulations and compare them to the information they receive from the USDA.

Project Description

This proposed amendment of Section 3425 will add approximately nine square miles surrounding the infestation in the Arvin area of Kern County as an additional area under quarantine for melon fruit fly. The total regulated area in Kern County would increase to approximately 91 square miles. To prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary immediately to regulate movement of hosts that can carry the fly from, into and within the infested area and a surrounding buffer area.

The goal of quarantine activities is the prevention of human-assisted dispersal of the melon fruit fly from infested to uninfested areas. In the case of melon fruit fly, the buffer area, which is 4.5 miles, is three times the distance of any anticipated natural spread. The real threat of long distance spread is from human-assisted movement of infested host material.

The proposed quarantine area is considered the minimum area surrounding the initial detection site which should be regulated to prevent artificial spread of melon fruit fly to uninfested areas. The effect of the amendment of this regulation will be to implement the State's authority to perform quarantine activities against the melon fruit fly in this area of Kern County. Any quarantine actions undertaken by the Department will be in cooperation and coordination with the USDA and the Kern County Agricultural Commissioner.

Quarantine activities include the establishment of the boundary, notification of affected residences and businesses, monitoring and regulation of susceptible commodities and articles covered. This may include soil, raw cannery waste, fruits, host nursery stock, etc., which have been exposed to infestation by the melon fruit fly. Sellers and transporters of host commodities and articles are required to implement measures to protect their commodities and articles from infestation. Protective measures include but are not limited to, refrigeration of host commodities, enclosure in fly proof packaging or containers, the use of air screens, automatic doors or screening to exclude Melon fruit fly from areas where hosts are present and are intended to be subsequently moved either within or from the quarantine area. Growing season protective or post-harvest treatments of exposed host commodities may be required prior to movement from or within the quarantine area and be monitored by regulatory officials.

The Department also relied upon the following documents for determining this proposed emergency rulemaking:

Letter dated August 11, 2010, from Ruben J. Arroyo to A.G. Kawamura

California Pest and Damage Record #s 1443630 and 1443631.

"Exotic Fruit Fly Strategic Plan" June 19, 2006, United States Department of Agriculture.

“Action Plan for CUELURE ATTRACTED FRUIT FLIES, Including the Melon Fly, *Bactrocera cucurbitae* (Coquillett),” Revised April 2000, California Department of Food and Agriculture, Plant Health and Pest Prevention Services (ten pages).

“Action Plan, Melon Fly, *Dacus cucurbitae* (Coquillett),” September 1984, United States Department of Agriculture.

Authority and Reference Citations

Section 3425:

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 5761, 5762, 5763 and 5764, Food and Agricultural Code.

Informative Digest

Existing law provides that the Secretary may establish, maintain, and enforce such regulations as he deems necessary to protect the agricultural industry of California from the spread of pests. The Secretary may make and enforce such regulations as he deems necessary to prevent any plant or thing which is, or is liable to be, infested by or which might act as a carrier of any pest, from passing over any quarantine boundary which is established.

Section 3425. Melon Fruit Fly Interior Quarantine.

This amendment will add approximately nine square miles surrounding the Arvin area of Kern County to the regulation as an additional area under quarantine for melon fruit fly. The total area regulated in Kern County would increase to approximately 91 square miles. The effect of the change is to provide authority for the State to regulate movement of hosts of melon fruit fly from, into and within this area to prevent the artificial spread of the fly to noninfested areas to protect the public and California’s agricultural industry.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3425 does not impose a mandate on local agencies or school districts, except that agricultural commissioners of counties under quarantine have a duty to enforce it. No reimbursement is required under Section 17561 of the Government Code because the Kern County Agricultural Commissioner requested the change in regulations.

Cost Estimate

The Department has also determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.